

SENATE BILL REPORT

SB 6339

As of January 21, 2018

Title: An act relating to clarifying hours and wages for education employee compensation claims.

Brief Description: Clarifying hours and wages for education employee compensation claims.

Sponsors: Senators Keiser, Hasegawa, King, Conway, Ranker, Saldaña and Wellman; by request of Employment Security Department.

Brief History:

Committee Activity: Labor & Commerce: 1/17/18.

Brief Summary of Bill

- Changes the requirements for unemployment benefits for educational employees who have multiple employers.
- Modifies the definition of the terms reasonable assurance and contract with respect to educational employees' continued employment for purposes of unemployment benefits.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Susan Jones (786-7404)

Background: Unemployment benefits are payable to unemployed workers who meet certain eligibility requirements. Unemployment contributions are paid by employers based, in part, on wages paid in covered employment. Most employment is covered for purposes of unemployment insurance. The Employment Security Department (department) administers unemployment benefits in Washington.

Exceptions to Payment of Unemployment Benefits. Unemployment insurance law provides that benefits based on any and all service in an instructional, research, or principal administrative capacity for any and all educational institutions will not be paid to an individual for any week of unemployment which commences during the period between two successive academic years or between two successive academic terms within an academic year if the individual performs those services in the first of such academic years or terms and

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if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms. Any employee of a common school district who is generally presumed to be reemployed is deemed to have a contract for the ensuing term.

Reasonable Assurance Defined. Reasonable assurance, means a written, verbal, or implied agreement that the employee will perform services in the same capacity during the ensuing academic year or term as in the first academic year or term. A person is not deemed to be performing services in the same capacity unless those services are rendered under the same terms or conditions of employment in the ensuing year as in the first academic year or term.

An individual who is tenured or holds tenure track status is considered to have reasonable assurance, unless advised otherwise by the college.

In the case of community and technical colleges assigned certain standard industrial classification codes for services performed in a principal administrative, research, or instructional capacity, a person is presumed not to have reasonable assurance under an offer that is conditioned on enrollment, funding, or program changes. The college has the burden to provide sufficient documentation to overcome this presumption. Reasonable assurance must be determined on a case-by-case basis by the total weight of evidence rather than the existence of any one factor. Primary weight must be given to the contingent nature of an offer of employment based on enrollment, funding, and program changes.

Federal Guidance. On December 22, 2016, the U.S. Department of Labor's Employment and Training Administration Advisory System issued guidance regarding the interpretation of the terms contract and reasonable assurance. The guidance superseded previous guidance issued in 1986. The guidance applies to all levels of education for public and non-profit educational institutions, including primary, secondary, and post-secondary education. The guidance clarifies the definitions and explains how they apply to situations not provided in the 1986 guidance.

Summary of Bill: Multiple Employers. Where a school employee has multiple educational institution employers, wages from any institution that has not provided reasonable assurance of employment may be used for claiming unemployment benefits.

Prerequisite Requirements. The following prerequisite requirements must be met before making a determination about whether there is a contract or reasonable assurance:

- the offer of employment (1) may be written, verbal, or implied, and must be made by an individual with actual authority to offer employment; and (2) provides that the employee will perform services in the same capacity during the ensuing academic year or term—or remainder of the current academic year or term—as in the first academic year or term; and
- the economic conditions of the offer of employment may not be considerably less in the following academic year or term than in the first academic year or term. Considerably less includes the condition that the individual will not earn at least 90 percent of the wages earned in the prior academic year or term.

If any of the above prerequisites are not satisfied, the department cannot deny the claimant unemployment compensation based on the between and within term denial provisions.

Contract. If all prerequisite requirements are satisfied, the department must determine if a contract exists.

The term contract, means an enforceable, noncontingent agreement that provides for compensation for an entire academic year or on an annual basis. If a contract exists, the claimant may be subject to a denial of benefits.

Reasonable Assurance. If no contract exists, the department must determine if the claimant has reasonable assurance. The following factors will be considered in determining if an individual has reasonable assurance and each factor must be satisfied. If any contingencies in the employment offer are within the employer's control the claimant will not be considered to have reasonable assurance of employment. Contingencies within the employer's control include course programming, funding allocation decisions, final course offerings, and facility availability.

If contingencies are not within the employer's control, the department will determine whether it is highly probable that the contingencies contained within the offer will be satisfied. Primary weight will be given to the contingent nature of an offer of employment.

Reasonable assurance must be determined on a case-by-case basis considering the totality of circumstances rather than on the existence of any one factor. For an individual to have reasonable assurance of employment, the totality of the circumstances must show that it is highly probable that employment will be available in the next academic year or term, and that the contingencies of that employment will be satisfied.

An individual who is tenured or holds tenure track status is considered to have reasonable assurance, unless advised otherwise by the college. For the purposes of this section, tenure track status means a probationary faculty employee having an opportunity to be reviewed for tenure.

Other. Changes are made to the legislative intent provisions. A severability clause is provided.

The act applies to claimed weeks of employment on or after October 1, 2018.

Appropriation: None.

Fiscal Note: Requested on January 11, 2018.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is helpful for school employees, especially classified staff. This is agency requested legislation. This changes the way

eligibility for school employees is determined during school breaks. Federal law requires that claimants who seek to use wages from work done in certain school employment to have different unemployment eligibility than other occupations. The goal of reasonable assurance is to determine if an employee is likely to have work after the school break and whether the work will be similar to previous work. The US DOL guidance changes of couple of factors. The guidance was effective immediately and we are out of compliance. This is why ESD brings this forward. The bill meets the new definitions and brings the state into compliance.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Nick Streuli, Legislative Director, Employment Security Department.

Persons Signed In To Testify But Not Testifying: No one.